

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,	)	CASE NO. 8:05CR349
	)	
Plaintiff,	)	
	)	
vs.	)	TENTATIVE FINDINGS
	)	
ANTONIO MARTIN,	)	
	)	
Defendant.	)	

The Court has received the Revised Presentence Investigation Report (“PSR”) and the parties’ objections thereto (Filing Nos. 22, 23). See “Order on Sentencing Schedule,” ¶ 6. The Court has also reviewed the Defendant’s sentencing memorandum, in which the Defendant requests a deviation from the guidelines (Filing No. 24). The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The parties object to the quantity of controlled substance attributable to the Defendant in ¶ 27 and the application of base offense level 28. The plea agreement includes a nonbinding agreement that the Defendant is “responsible for more than 5 grams but less than 20 grams of cocaine base.” (Filing No. 18, ¶ 6.) The probation officer reached a high drug quantity by converting cash into drugs, despite acknowledging that “AUSA Moran . . . is not confident that the money is from drug proceeds.” (PSR, ¶ 20.) The Court’s tentative findings are that, absent unusual circumstances, the plea agreement should be upheld and the base offense level should be calculated as level 26.

IT IS ORDERED:

1. The Court's tentative findings are that the parties' objections (Filing Nos. 22, 23) to the Revised PSR are granted;

2. The parties are notified that my tentative findings are that the PSR is correct in all other respects;

3. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

6. The Defendant's request for a deviation from the sentencing guidelines will be discussed at sentencing.

DATED this 23<sup>rd</sup> day of February, 2006.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge